

because the concentration of economic power by the *chaebol* in Korea, being a problem bringing together issues of general concentration, market concentration, and ownership concentration, cannot be stopped simply at the dimension of the competition system. The reason for this is that it is not appropriate to regulate this issue in the Act, which is aimed at maintaining fair and free competition in individual markets. It is a complicated issue at the political, economic, business, cultural and social dimensions and is a highly political issue that raises delicate problems. Furthermore, if the Commission comes to handle the issue of concentration of economic power by the *chaebol*, it cannot escape this problem's characteristic political influences, because there are concerns that it could make difficult the performance of the essential duties of the Commission, which must view the competitive system from the long-term perspective independent from political power or the government's policy influence. Accordingly, in the long term, the government should establish comprehensive policies for the prevention of concentration of economic power, and should implement these by entrusting these to a separate independent agency, removing these from the Antitrust Act.

IV. Conclusion

While the Fair Trade Commission endeavours to solve at the same time many kinds of issues which have very different dimensions, it appears that it is making the mistake of not being able to execute properly even its original role of maintaining a fair and free economic order. Accordingly, in future, it would be desirable for the Fair Trade Commission not to embrace all these problems and thereby become overstretched, but to devote itself solely to the fundamental duty it must perform, that is, the work of maintaining and realizing in certain terms a fair and free economic order, which is the precondition to realizing the proper functioning of the market economy. Other duties such as, for example, the prevention of the concentration of economic power, should be transferred to a separate body suitable to be in charge of this, and on the other hand, matters which are mainly related to conflicts between parties such as the regulation of unfair trade practices should be entrusted to private remedies by the courts, so that the parties can resolve these themselves.

Enforcement Direction of Competition Law

*Dong Won Suh**

Abstract

The Monopoly Regulation and Fair Trade Act (hereinafter MRFTA: Korea's competition law), which was enacted in 1980, has been introduced and enforced to achieve more mature market economy. In order to normalize distorted market functions arising from the government-led economic growth, the activities such as abusive behavior of market dominance, cartel, anti-competitive M&A and unfair trade practices were prohibited under the law. However, since the mid 1980s, due to rising problems of excessive concentration of economic power and influence from large business conglomerates, or Chaebols, the Korea Fair Trade Commission (hereinafter KFTC: Korean government agency for enforcement of the competition law) has amended the MRFTA many times, imposing restrictions on shareholdings and transaction practices, such as prohibition of cross shareholdings and debt-guarantee between affiliates, restriction on total amount of shareholdings in other domestic companies, and prohibition of undue intra-group transactions. In addition, the KFTC enacted the Fair Subcontract Transactions Act for small- and medium-sized enterprises (SMEs) not to face undue disadvantages in subcontract transactions, which can often arise from asymmetric negotiation powers between SMEs and large companies. Such regulations on large companies are causing a lot of criticisms these days as every aspect of the Korean economy has become more and more exposed to international competition with acceleration of globalization. Therefore, by getting various ideas from a wide range of opinion groups since early 2003, the government established the 3-Year Market Reform Roadmap which aims at facilitating market functions through regulatory reform as well as reinforcement of cartel regulation and prohibition of unfair trade practices. In addition, for large business conglomerates, the roadmap is designed to enhance transparency in business management and improve corporate governance, while streamlining previous regulations on them. By evaluating the performance of the improvement of corporate governance, the government will review whether to abolish or ease the regulations on large companies after 3 years of implementation of the Roadmap. This policy direction was reflected on the amended MRFTA in late 2004.

* Commissioner, Fair Trade Commission Republic of Korea (KFTC) (2003-); Director, Defense Budget II Division, Business Group Division, Legal Affairs Division, EPB (Economic Planning Board) (1987-1994); Director, Small and Medium Size Financial Institution Division, MOFE(Ministry of Finance and Economy) (1994-1996); Director-General, Antitrust Bureau, KFTC (1996-1997); Director, Financing Division, KEDO (Korean Peninsula Energy Development Organization) (1998-2000) ; Director-General, Fiscal Reform Bureau, Ministry of Planning and Budget (2001-2003); B.S. Seoul National University, College of Engineering (Electronic Engineering), 1974; LL.B. Seoul National University, 1976; LL.M. Columbia Law School, 1989; Ph. D. in Law Hanyang University, 1997.

I. Introduction

Since the enactment of the MRFTA at the end of 1980, Korea's competition law has been amended 10 times up until 2004. The MRFTA was introduced as a corrective measure because the government-led growth policy since 1960s brought about not only rapid economic growth within a short period of time but also market distortion due to excessive government intervention which became an impasse to continuous growth. Since then, in accordance with the changes of economic situation, the regulations to curb economic concentration through excessive investment by so-called *Chaebols*, such as the regulation on total amount of shareholdings in other domestic companies, were introduced in mid 1980's. In 1990's, the regulations on undue intra-group transaction and debt-guarantee among affiliates of a business conglomerate were added. On the other hand, the Fair Subcontract Transactions Act was enacted in 1984 to protect small- and medium-sized subcontract businesses, deriving from the MRFTA. In the same way, the Fair Labeling and Advertising Act was introduced in 1999 to protect consumers. Regarding competition authorities, after having started as an advisory body under the Economic Planning Board (EPB) in charge of overall administration of economic policies, the KFTC became an official organization in charge of the enforcement of the MRFTA in 1990. It parted with the EPB and became an independent central administrative body in 1994. In 1996, the administrative level of the KFTC chairman was upgraded to minister-level, ensuring the same status with other ministries. As shown in the past history of the MRFTA, there have been continuous requests from the Korean society not only to promote free competition but also to secure fair trade in the market since 1980s. Reflecting such needs, the contents of the MRFTA have been changed significantly.

Besides the three Acts mentioned above, the KFTC administers 6 more Acts, including the Omnibus Cartel Repeal Act, the Adhesion Contract Act, the Door-to-Door Sales, etc. Act, the Installment Transactions Act, the Consumer Protection in Electronic Commerce Act and the Fair Franchise Transactions Act, all of which are frequently referred to as 'competition laws in a broad sense.' Hereinafter, the explanation of this article will be focused on the MRFTA, which serves as a core of the Korean competition law.

II. Major Points and Enforcement Direction of the MRFTA

A. Purpose of the Act

The purpose of the MRFTA is stipulated under the Article 1 of the Act.¹⁾ The ultimate goals are i) to encourage creative business activities; ii) to protect consumers; and iii) to promote balanced development of national economy. However, in a practical sense, the goals of the act are usually said to be promotion of free and fair competition.

B. Means to realize the purpose of the MRFTA

In a way to achieve the purpose, the Act stipulates to promote free and fair competition through preventing abusive behavior of market dominant position and concentration of excessive economic power, and regulating cartels and unfair trade practices.

In accordance with such provisions, the KFTC has established and implemented various policies, which can be divided into two categories; those to promote free competition and the others to ensure fair competition.

First, in order to facilitate free competition, the KFTC has been focusing on creating the environment to promote free competition, improving monopolistic market structure and preventing cartels and various unfair trade practices.

For competition-friendly environment, the KFTC continues to improve anti-competitive regulations, to strictly enforce competition laws, to spread competition culture such as voluntary compliance with the MRFTA, and to step up international cooperation in the field of competition laws and policies.

To address monopolistic market structure, the KFTC is focusing on reinforcement of the regulations designed to prevent anti-competitive M&As beforehand which may result in or aggravate monopoly. With regard to monopolistic

1) Article 1 (Purpose): The purpose of this Act is to promote fair and free competition, to thereby encourage creative enterprising activities, to protect consumers, and to strive for balanced development of the national economy by preventing the abuse of market-dominating positions by enterprisers and the excessive concentration of economic power, and by regulating undue collaborative acts and unfair trade practices.

markets which are already established, The KFTC is seeking measures to correct abusive behavior by monopolistic businesses and to further improve the monopolistic market structure. In particular, in case of public businesses whose monopoly is legally granted, the focus lies in preventing abusive behavior of the monopolistic power.

In order to get rid of undue collaborative activities, the KFTC seeks to remove incentives of cartels by thorough investigation and strict punishment against them. As for various unfair trade practices, the KFTC is enhancing the efficiency of the regulatory system through active monitoring.

Second, to ensure fair competition in the market, the KFTC is working to ease economic concentration by *Chaebols*, to prevent its side effects, and to improve unbalanced business relations between large companies and SMEs.

As for mitigating economic concentration by *Chaebols* and preventing its side effects, the KFTC is thoroughly monitoring them to prevent violation of various prohibitions such as prohibition on cross shareholding among affiliates of a large business group. In addition, various systems and regulations are made to enhance corporate governance and transparency in transactions of business groups. Moreover, the KFTC closely monitors undue intra-group transactions between affiliates.

In order to improve business relations between large companies and SMEs, the KFTC also pays attention to address unfair subcontract transaction practices. In particular, it works to improve transaction relationship between large retailers and their small and medium-sized product suppliers while endeavoring to enhance fairness of transaction practices in the franchise businesses.

Third, in order to protect consumers, the KFTC strives to strengthen efforts to prevent consumer damages arising out of unfair representations and advertisements, unfair adhesion contracts and undue behavior on electronic transactions.

With regard to violations of the MRFTA, the KFTC is given authority to take various sanctioning measures such as corrective order directing to stop the violations, publication order to make the violators announce the fact that they were given the corrective order, imposition of surcharge with the purpose to disgorge undue profits from the violation, and filing complaint to prosecutors' office on some severe cases of violation. In cases where violation is relatively minor, corrective recommendations or warnings are also available. If the violator accepts them, they have the same effects as corrective orders.

When the violator objects to the KFTC's sanctions, it can appeal to High Courts. While there are articles of criminal punishment against most violations of the MRFTA, the prosecutor cannot indict the violator without prior complaint filed by the KFTC. However, the Attorney General can ask the KFTC to file a complaint when there is a substantial and clear violation of the Act.

C. Framework and Enforcement Direction of the MRFTA

1. Reform of Anti-competitive Regulations

As the markets of Korean economy have been distorted due to the government-led rapid economic growth, deregulation takes a substantial part in competition policy. Therefore, the MRFTA lays the legal foundation for the competition authority to pursue deregulation. When other government ministries legislate any anti-competitive laws and regulations or take any administrative measures with anti-competitive effects, they should consult with the KFTC beforehand.²⁾

2) Article 63 Consultation on Enactment of Acts which Restrain Competition

- (1) The chief-officer of the competent administrative authority shall seek, in advance, consultation with the Fair Trade Commission, where he wishes to propose legislation or amend enactments containing anti-competitive regulations such as restrictions on the fixing of prices or the terms of transaction, entry to markets, business practices, unfair collaborative acts, prohibited practices of an enterpriser or an enterprisers organization, etc. and where he wishes to approve or make other measures involving anti-competitive factors against an enterpriser or an enterprisers organization.
- (2) The chief-officer of the competent administrative authority shall give, in advance, notice to the Fair Trade Commission when he intends to enact or amend any rules or regulations involving anti-competitive factors.
- (3) With regard to approvals or other measures involving anti-competitive factors under paragraph (1), the chief-officer of the competent administrative authority shall give notice to the Fair Trade Commission regarding the contents of the approval concerned or other measures.
- (4) In relation to notice under paragraph (2), where it is recognized that rules or regulations to be enacted or amended contain anti-competitive provisions, the Fair Trade Commission may give advice to the chief-officer of the competent administrative authority as to the modification of such anti-competitive provisions. This paragraph shall also apply to enactments made or amended without to the Fair Trade Commission as prescribed by paragraph (1), Acts and subordinate statutes enacted or amended without notice, approvals or other measures given without notice.

Regarding not only new legislations and administrative measures, but also current laws under enforcement, the KFTC is providing suggestions for improvement to the ministries concerned if it determines that they have anti-competitive effects. In fact, in 2004, the KFTC selected 113 such tasks and reached an agreement with the ministries concerned to improve 56 tasks among them. For the remaining tasks, the KFTC will continue to consult with the relevant ministries and provide the improvement measures, which may indicate that the KFTC puts the regulatory reform as the priority of competition policy.

As another measure to create environment of free competition, the KFTC has spread Compliance Program (hereinafter CP). By inducing businesses to adopt and implement their own compliance programs with the MRFTA and to educate their executives and employees not to commit violations of the MRFTA such as cartels and unfair trade practices, the program aims to prevent violation of the MRFTA in advance. As of now, 193 companies have introduced this program and the KFTC is providing incentives for more companies to introduce this program.

2. Improvement of Monopolistic Market Structure

a) Prohibition of Anti-competitive M&A's

In order to stave off formation or aggravation of monopoly from business combinations between competing enterprises, the KFTC requires merging parties to make a notification to the KFTC of the share acquisition, M&A, business transfer, participation in the establishment of a new company, and concurrent holding of an officer's position with certain criteria, going through a review to determine whether the transaction falls within the purview of anti-competitive business combination or not.³⁾ If the business combination is deemed to be anti-competitive, the KFTC takes

3) Article 7 Restriction on Combination of Enterprises

- (1) No one shall, directly or through a person determined by Presidential Decree as having special interest (hereinafter referred to as the "person with special interest"), substantially lessen
- (2) Competition in a particular business area by conducting practices falling under any of the following subparagraphs (hereinafter referred to as "combination of enterprises"); *provided* that this shall not apply where a person other than a company whose total assets or turnover (referring to the sum of total assets or

corrective order to restore previous status such as sell-off of shares or transfer of the acquired business. If the extent of the anti-competitiveness is not that severe, the KFTC can just order a partial asset sell-off or price monitoring.

In the process of carrying out an all-out restructuring of business conglomerates under the financial crisis, there have been the criticisms that the KFTC's review over business combinations has become somewhat loose. However, recently, with regard to business combinations which may have anti-competitive effects, cases can comparatively frequently be found where structural measures such as a share sell-off order are taken. In addition, business combinations taking place overseas among foreign companies are also required to be notified to the KFTC for review of anti-competitiveness within Korean markets, if it is likely to have an impact on domestic market.

The M&A review will be developed further ahead with regard to the criteria of anti-competitiveness to meet the global standards. At the same time, in terms of procedural matters, the KFTC plans to manage the review in a way to ease the burden of the companies by, for example, reducing the companies' notification obligations.

b) Mitigation of Market Concentration

The MRFTA takes two measures against market concentration. First is to

turnover of affiliated companies) meets an amount determined by Presidential Decree (hereinafter referred to as "large company"), performs an act falling under subparagraph 2:

1. The acquisition or ownership of stocks of other companies;
2. The concurrent holding of an officer's position in another company (hereinafter referred to as the "concurrent holding of an officer's position") by an officer or employee (referring to a person who continues to be engaged in the affairs of the company, but is not an officer; hereinafter the same shall apply);
3. A merger with other companies;
4. An acquisition by transfer, lease or acceptance by mandate of the whole or main part of business of another company, or the acquisition by transfer of the whole or main part of fixed assets used for the business of another company (hereinafter referred to as the "acquisition by transfer of business"); and
5. Participation in the establishment of a new company; *provided* that this shall not apply to the following cases.
 - (a) Where a person other than persons with special interests (excluding those determined by Presidential Decree) does not participate in the establishment of a new company; or
 - (b) Where a person participates in the establishment of a company by division under Article 530-2 (1) of the Commercial Act.

prohibit abuse of market dominant position. Second is for the KFTC to establish and implement policy measures to promote competition in the markets which maintain long-term monopolistic market structure. In the past, the KFTC focused on regulating the abuse of market dominant positions.⁴⁾ However, since the 1997 amendment of the MRFTA, the KFTC has taken corrective measures by selecting 3~4 products each year and investigating the legal systems and transaction practices which restrict competition of the relevant market.

The KFTC will continue to strengthen its market analysis functions. At the same time, through the market analysis, the KFTC will explore more active and stricter corrective measures to regulations and practices impeding new entry and excluding competitors in the markets where monopolistic market structure is deeply rooted.

c) Prevention of Abuse of Monopoly Power by Public Enterprises

Public enterprises, such as the government-invested organizations, have their own characteristics in that their monopoly in a certain market is acknowledged under the relevant laws. However, to the extent of avoiding confliction with the relevant law, the MRFTA is applied to their general business activities. So far, with regard to unfair business activities by public enterprises such as coercing disadvantage to counterparts of the transaction through abuse of their dominant position, the KFTC has taken corrective measures considering these activities as illegal unfair business practices. More recently, when a government-invested organization does any discriminatory transaction for its affiliates against other firms, such behavior is

4) Article 3-2 Prohibition of Abuse of Market-Dominating Position

(1) No market-dominating enterpriser shall commit acts falling under any of the following subparagraphs (hereinafter referred to as "abusive acts"):

1. An act determining, maintaining, or changing unreasonably the price of commodities or services (hereinafter referred to as the "price");
 2. An act unreasonably controlling the sale of commodities or provision of services;
 3. An act unreasonably interfering with the business activities of other enterprisers;
 4. An act unreasonably impeding the participation of new competitors; and
 5. An act unfairly excluding competitive enterprisers, or which might considerably harm the interests of consumers.
- (2) Categories or standards for abusive acts shall be determined by Presidential Decree.

subject to receive corrective measures as prohibited undue intra-group transactions.

The KFTC is also planning to review, and seek corrective measures if necessary, problems of unfair competition which may possibly take place when a public enterprise crosses the border of its own business field and enters another private business area (for example, Postal Office's participation in financial or insurance businesses).

3. Monitoring Cartels and Unfair Trade Practices

a) Prevention of Cartels

An enterpriser should not make an agreement with other enterprisers which unfairly restrains competition through price fixing, restraint on supply, market division and restraint on trading partner.⁵⁾ When there is such agreement as price fixing with other enterprisers, it is regarded as violation of the MRFTA, and the MRFTA does not require that the agreement has actually been executed by acts. The existence of such agreement shall be proved by the KFTC. However, when two or more enterprisers are doing price fixing which substantially restrains competition in

5) Article 19 Prohibition of Unfair Collaborative Acts

(1) No enterpriser shall agree with other enterprisers by contract, agreement, resolution, or any other means to jointly engage in an act, or let others do this kind of activities, falling under any of the following subparagraphs, that unfairly restricts competition (hereafter referred to as "unfair collaborative acts")

1. An act fixing, maintaining, or changing prices;
2. An act determining terms and conditions for transactions of goods or services, or payment of prices thereof;
3. An act restricting production, delivery, transportation, or transaction of goods or services;
4. An act limiting the territory of trade or customers;
5. An act preventing or restricting the establishment or extension of facilities or the installation of equipment necessary for the production of goods or the rendering of services;
6. An act restricting the types or specifications of goods or services in producing or transacting goods or services;
7. An act of jointly carrying out and managing the main parts of a business, or establishing a company, etc. to jointly carry out and manage the main parts of a business; or
8. Any practice that substantially lessens competition in a particular business area by means, other than those under Subparagraph 1 to 7, of interfering with or restricting the activities or contents of business.

the market, they are presumed to be involved in undue concerted behavior even without explicit evidence on the existence of an agreement.⁶⁾

Practices of cartel are known to be different from country to country. As Korea traditionally has a strong and deep sense of mutual cooperation, Korean businesses tend to be less aware of seriousness of cartel. Therefore, cartel has been prevalent in almost every sector in the market.

Given such social circumstances, the KFTC has bolstered its position to cartel step by step. In February 1999, along with a worldwide trend prohibiting hard-core cartels, the KFTC also enacted the Omnibus Cartel Repeal Act, seeking to hammer out the cartels comprehensively. In particular, considering the difficulties of investigating cartels, the KFTC has referred to the examples of the U.S. and other countries, actively introducing the leniency program and gaining a substantial performance. Considering cartels as the most serious enemy to the market economy, the KFTC is now planning to strengthen the functions of cartel investigation and to double the surcharges on cartels.

b) Monitoring of Unfair Trade Practices

When a business carries out behaviors which are likely to hamper fair trade by unduly refusing transaction or discriminating trading partner, the KFTC takes measures, such as corrective order and imposition of surcharges, as it recognizes the behaviors as illegal unfair trade practices.⁷⁾ The MRFTA stipulates 8 types of unfair trade practices, and the Enforcement Decree of the MRFTA and other guidelines

6) (5) Where two or more enterprisers are committing any acts listed in the subparagraphs of paragraph (1) that practically restrict competition in a particular business area, they shall be presumed to have committed an unfair collaborative act despite the absence of an explicit agreement to engage in such act.

7) Article 23 Prohibition of Unfair Trade Practices

(1) No enterpriser shall commit any act falling under any of the following subparagraphs and that is likely to impede fair trade (hereinafter referred to as "unfair trade practices"), or make an affiliated company or other enterprisers perform such an act:

1. An act which unfairly refuses any transaction, or discriminates against a certain transacting partner;
2. An act designed to unfairly exclude competitors;
3. An act unfairly coercing or inducing customers of competitors to deal with oneself;
4. An act making a trade with a transacting partner by unfairly taking advantage of his position in the business area;

explain and notify specific types of unfair trade practices in more detail.

Resale price maintenance, which means that a seller or a producer of goods sets the price of its retailer and forces the retailer to sell the goods at that price, is separately prohibited under the MRFTA.⁸⁾ Resale price maintenance has been prohibited as *per se* illegal. However, when there is maximum resale price maintenance with good reasons, it can be exceptionally deemed as legitimate under the rule of reason analysis.

With regard to unfair trade practices, the KFTC had originally treated the cases simply with prohibition orders or publication orders which make the violators announce the fact of the violation. However, with growing requests for correction of unfair trade practices, surcharges and criminal punishment became also available. If the violation is severe enough, the KFTC may impose surcharges up to 2% of the company's related sales.

In order to further enhance the fairness of market competition, the KFTC will steadily pursue the policies to curb unfair trade practices. To this end, standards and criteria to judge unfair trade practices will be set more clearly, while monitoring mechanism on new types of unfair trade practices in industries such as IT where rapidness and innovation are taking place will be strengthened continuously.

5. An act of trade under terms and conditions which unfairly restrict or disrupt business activities;

6. Deleted;

7. An act assisting a person with a special interest or other companies by providing advanced payment, loans, manpower, immovable assets, stocks and bonds, or intellectual properties thereto, or by transacting under substantially favorable terms therewith; and

8. Any act that threatens to impair fair trade other than those listed in subparagraphs 1 through 7.

(2) The categories or standards for unfair trade practices shall be determined by Presidential Decree.

8) Article 29 Restrictions on Resale Price Maintenance

(1) No enterpriser shall engage in a resale price maintenance; *provided* that this shall not apply to the case where there exist justifiable reasons in terms of the maximum price maintenance preventing the transactions of commodities or services in excess of specified prices.

(2) The provisions of paragraph (1) shall not apply to literary works prescribed by Presidential Decree, or to those commodities that meet all of the following conditions and have been designated in advance by the Fair Trade Commission as being eligible for resale price maintenance:

1. The uniformness in quality of the commodity concerned is easily identifiable;
2. The commodity concerned is used daily by ordinary customers; and
3. Free competition exists with respect to the commodity concerned.

c) Prohibition of Anti-competitive Practices of Business Associations

It is prohibited for a business association to let its member companies do undue collaborative behavior, to restrain the number of its member companies, to obstruct business activities, and to do unfair trade practices or resale price maintenance.⁹⁾

Externally, business association aims to promote relationship among its member companies. However, under the social environment prevalent with collusion, it is highly likely to serve as a system stimulating the cartel. Therefore, in order to boost free competition in the market, prohibiting anti-competitive activities of business associations along with eradicating cartels is one of the most important tasks in the enforcement of the MRFTA. To root out anti-competitive practices of business associations, the KFTC is recently doubling its policy efforts, by, for example, increasing the amount of surcharges which may be imposed on such cases.

4. Enhancement of Transparency in Large Business Conglomerates and Prevention of Unfair Trade Practices

a) Enhancing Transparency in Business Conglomerates

Business conglomerates above a certain size are subject to the regulation. Every year, the government designates the business conglomerates concerned, monitoring them not to hamper market competition by abusing their dominating economic position as a group. In the past, direct regulations such as ceiling on total amount of shareholding of other domestic companies had been emphasized. Therefore, measures regulating shareholdings, debt-guarantee and transactions among affiliates

9) Article 26 Prohibited Activities of Enterprisers Organization

(1) No enterprise organization shall commit any of the following acts:

1. Any act unfairly restricting competition including acts falling under any subparagraph of Article 19 (1);
2. Any act restricting the present or future number of enterprisers in any business area;
3. Any act unreasonably restricting the business matters or activities of member enterprisers (referring to an enterpriser who is a member of the enterprisers organization; hereinafter the same shall apply);
4. Any Act inducing a person to or assisting a person in the conduct of unfair trade practices under each subparagraph of Article 23 (1), or to conduct practices of resale price setting under Article 29; and
5. Deleted.

under the same business conglomerates have been introduced and implemented until mid-1990's. However, recently, policy focus has been shifted to curb such behavior from direct regulation to indirect way through social monitoring by transparent disclosure of relevant lists.

In accordance with this policy direction since 2000, business conglomerates have been obliged to make public announcement on their internal trading above certain amount. In addition, at the end of 2004, as a part of efforts to improve corporate governance, the KFTC disclosed the ownership structures of affiliates under business conglomerates, covering both listed and non-listed companies. Now, the KFTC is determined to manage the *Chaebol* policies focusing on facilitating social monitoring by enhancing transparency of business management, rather than taking direct regulations on shareholdings and debt-guarantees. To this end, companies under business conglomerates will be obliged to disclose their information on financial structure and shareholder ownership regardless of whether they are listed or not.

b) Ensuring Efficacy of Regulations on Business Conglomerates

Business conglomerates above a certain amount¹⁰⁾ are prohibited from cross shareholdings¹¹⁾ and debt-guarantee¹²⁾ among affiliates under the same business group

10) Business conglomerates subject to prohibition of cross shareholdings and debt-guarantee are those with more than 2 trillion won of total assets of affiliates, while those subject to the restraint on total amount of shareholdings in other domestic companies have more than 5 trillion won of assets in its affiliates.

11) Article 9 Prohibition, Etc. of Cross Shareholding

(1) Any company belonging to an enterprise group whose total assets, etc. fall under the criteria as prescribed by the Presidential Decree, and thereby designated under Article 14 (1) (hereinafter referred to as an "enterprise group subject to the limitations on cross shareholdings") shall not acquire or own stocks of an affiliated company which acquires or owns its stocks: *Provided*, That this shall not apply to the case where it falls under any of the following subparagraphs:

1. A merger of companies, or the acquisition by transfer of a whole business; and
2. An enforcement of security rights, or the receipt of an accord and satisfaction.

12) Article 10-2 Prohibition of Debt Guarantees for Affiliated Company

(1) Any company (excluding a company conducting the financial business or insurance business; hereinafter the same shall apply) belonging to an enterprise group which falls under the criteria set forth in the

while the total amount of shareholdings of other domestic companies shall be restrained to up to 25% of net assets.¹³⁾ Internal trading between affiliates is prohibited, if it is deemed undue. Financial affiliates are restrained from the exercise of their voting rights over their shares held in other affiliates.

Such special regulations on business conglomerates have been executed as a part of policies to ease economic concentration since the amendment of the MRFTA in 1987. The regulations on business conglomerates are newly evaluated under the present global economic environment. As a consequence, the trend is to loosen the regulations allowing more exceptions to the regulations. If the businesses' efforts to improve corporate governance gain some positive results in three years, direct government regulations will be likely to be eliminated or further eased. However, the restraint on voting rights by financial affiliates has recently been strengthened with the perspective of separation of industrial capital and financial capital, aside from the trend of deregulation on business conglomerates.

The holding company system, which had been prohibited since 1987 as a part of

Presidential Decree, such as the total amount of assets in excess of a specific scale, and thereby designated under Article 14 (1) (hereinafter referred to as an "enterprise group subject to the limitations on debt guarantees"), shall not give debt guarantees to its domestic affiliated companies: *Provided*, that the same shall not apply to a debt guarantee which falls under any of the following subparagraphs:

1. A guarantee made in connection with any debt of a company, which is taken over according to the plan or criteria for rationalization under the Restriction of Special Taxation Act.
2. Deleted; and
3. A guarantee with respect to debts that is deemed necessary to enhance the international competitiveness of enterprises, or which are set forth by Presidential Decree.

13) Article 10 Ceiling on Total Amount of Shareholding of Other Domestic Companies

(1) Any company belonging to an enterprise group, whose total amount of assets, financial structure, number of affiliates and corporate ownership and governance structure and etc. falls under the standard prescribed by the Presidential Decree, and thereby designated under Article 14 (1) (hereinafter referred to as an "enterprise group subject to the ceiling on total amount of shareholding") shall be prohibited from acquiring or owning stocks of another domestic company in excess of an amount obtained by multiplying its net asset amount by 25/100 (hereinafter referred to as the "shareholding ceiling amount"):

Provided, that the same shall not apply to the case falling under any of the following subparagraphs:

1. Where such company acquires or owns new stocks of another domestic company within the ratio of acquired or owned stocks against the gross number of stocks issued by the said company. In this case, the same shall be limited to within two years from the date of acquisition or owning;

policies to curb economic concentration, became limitedly available with the amendment of the MRFTA in 1999. The amended Act recognizes the holding company system on the condition that the holding company maintains the debt ratio under 100% and the shareholding ratio to affiliates more than certain percentage (30% in case of listed affiliates and 50% in case of non-listed affiliates).¹⁴⁾ While holding company also has the problem of expanding its control through shareholdings, it is regarded as better corporate form for its more transparent corporate governance resulting from its simple shareholding structure compared to that of current business conglomerates. When business conglomerates strive to improve corporate governance, holding company structure can be a useful alternative. Therefore, the KFTC plans to provide various incentives to encourage business conglomerates to transform their structure into holding company system.

5. Improvement of transactional relationship between large companies and small- and medium-sized enterprises (SMEs)

The policy to ease economic concentration by business conglomerates aims at laying the foundation for fair competition between large companies and SMEs. Along with these measures, the KFTC has constantly monitored unfair trade practices to promote fair competition between large companies and SMEs in terms

14) Article 8 Report on Establishment of and Conversion into Holding Company

Where a person has established a holding company or has converted a company into a holding company, he shall make a report to the Fair Trade Commission under the conditions as prescribed by Presidential Decree.

Article 8-2 Restrictions, etc. on Holding Company

(1) Followings are the definition of the terms used in this Article;

1. The term "joint venture" means the enterprise (except the one which is invested by the person among specially related persons other than those set by the Presidential Decree), whose changes in shareholdings among shareholders are difficult as more than two persons of shareholders (among the shareholders who are under the relationship with specially related persons, those except the one set by the Presidential Decree shall be considered as one person) who own substantial amount of shares that can influence business management, severely restrain the ceiling of shareholdings with any contract or other similar measures.
2. The term "venture holding company" means the holding company having venture companies as subsidiaries pursuant to Article 2 (Definition), Paragraph 1 of the Act on Special Measures for the Promotion of Venture Business, in accordance with the criteria set by the Presidential Decree

of their activities in transactions. Among them, considering the fact that unfair trade practices often take place in the process of vertical subcontract transaction between large companies and SMEs, the KFTC has enacted and enforced the Fair Subcontract Transactions Act (hereinafter FSTA) in order to address unfair trade practices unique in subcontract relationship.

Because contractors in subcontract transaction take remarkably dominant position over subcontractors, subcontract transaction is highly likely to trigger disadvantages to subcontractors by arbitrary drafting of the contents of contract, delay of the payment and undue reduction of the contract amount. Therefore, in terms of ensuring fair transaction in the market, the law stipulates the corrective measures. In particular, considering that the situation of subcontractors makes it difficult for them to file complaints to the KFTC of the violations of the FSTA, the KFTC takes active measures to detect and correct violations through comprehensive written investigation on relevant industries.

Fair subcontract transaction is significant for sound development of SMEs in countries such as Korea which achieved economic development largely based on large companies, such as Korea. Therefore, it is often dealt with as an important task of fair trade policy. As for now, even though the monitoring and supervision over subcontract transaction are confined to construction and manufacturing industries, they are supposed to be greatly expanded to service industry in the near future.

Together with this, large retailers, such as department stores or discount stores, often commit unfair trade practices by using their dominant position over their relatively smaller suppliers. With regard to this as well, the KFTC will thoroughly detect and correct unfair trade practices through carrying out comprehensive written investigation and introducing monetary compensation system for voluntary report of violations.

In addition, with the fast growth of franchise industry, the number of franchise businesses has been rapidly on the rise. Between headquarters and franchise businesses, it is highly possible that unfair trade can take place due to a huge gap in transactional position between the two resulting from asymmetry in information about the franchise business and difference in capital. Therefore, under the relevant law, the franchise headquarters are obliged to provide enough relevant information to franchise businesses. Since there arise a lot of disputes between franchise headquarters and franchise businesses, the KFTC has recently established a dispute

settlement mechanism to facilitate conciliation of the dispute. Through these efforts, unfair trade practices in franchise businesses will be effectively prevented further ahead.

6. Consumer protection from unfair trade practices by enterprises- Prohibition of Undue Labeling and Advertising

When businesses unduly lure consumers through false or deceptive advertising, it is also subject to unfair trade practice. Such undue advertising can be more prevalent if social responsibility does not strongly take its root that consumers should be provided with accurate information. Prohibition of undue labeling and advertising had originally been dealt with as a type of inappropriately luring consumers among various unfair trade practices under the MRFTA. However, with the enactment of the Fair Labeling and Advertising Act (hereinafter FLAA) in 1999, such behavior is regulated under the FLAA independent of the MRFTA. With regard to undue labeling and advertising, the prohibition order, correction of the advertisement and surcharges are imposed depending on the seriousness of the violation. When the content of undue advertising is substantial and there is concern about consumer damages, temporary cease and desist order can be issued.

About undue advertising, the KFTC will step up monitoring through setting up monitoring mechanism in cooperation with private groups and executing investigation focusing on the sectors which pose a lot of problems.

III. Future Enforcement Direction of the Competition Law

A. Basic Direction

For basic principles of market economy to take a firm root in Korean economy, the KFTC will strive to improve the system and practices to enhance fairness in markets and transparency in business management.

The KFTC will also create business-friendly environment and prevent anti-competitive side effects by strengthening competition-promoting policies, such as reforming the anti-competitive regulations, strictly enforcing the amended MRFTA,

and curbing monopoly and cartels.

By successfully pursuing the 3-Year Market Reform Roadmap containing the visions and goals of market reform, the KFTC will continue to improve corporate ownership and governance structures and business practices of companies and business conglomerates.

In addition, to achieve the balance of power between companies under business conglomerates and independent SMEs, the KFTC will seek to establish rules for fair transactions between large companies and SMEs.

B. Major Priorities in the Enforcement

1. Promotion of Market Competition

Through reform of regulations which restrict competition, the KFTC will make the best efforts in creating free market environment where productivity can be enhanced through competition.

Excessive government regulations have a lot of side effects, such as frustrating entrepreneurship, employment and technological innovation, by restraining free competition in the market. In this regard, the KFTC selected 113 regulations with the help of study projects done by Korea Society for Regulatory Studies. Through the discussions in cabinet meetings and task forces per industries established in the KFTC and the Ministry of Finance and Economy, 56 tasks were agreed to be abolished or improved in 2004. For example, regulations which enabled SMEs to form cartels for government procurement business, which had been allowed so far to promote their business, are determined to be abolished.

KFTC and the Regulatory Reform Task Force under the Prime Minister's Office will pursue the remaining tasks for principal business in 2005 as long-term tasks. Moreover, among rules and provisions of local government, regulations restraining competition and hampering new entry of SMEs will be abolished and improved in a better way. Through the administrative procedures which require each ministry to consult with the KFTC before enactment or amendment of their regulations, the KFTC will actively raise its voice against anti-competitive laws and regulations. It should be admitted that such functions have not been facilitated so far, but the KFTC plans to closely work with the Regulatory Reform Committee and the Ministry of

Legislation for its opinions to be fully reflected in the enactment or amendment of the laws in the future. To this end, for the KFTC to raise its own opinion by directly getting any anti-competitive rules and guidelines from ministries concerned, the Enforcement Decree of the MRFTA will be amended.

2. Strict Enforcement Against Cartel

As cartel is said to be the chief enemy of the market economy, the KFTC plans to take strict measures against cartel along with thorough investigation. Recently, the KFTC is conducting concentrated investigations on suspected cartels in the sectors which are closely related to people's lives such as the sales price of apartment, and the intermediary sectors which determine the competitiveness of infrastructure industries.

The KFTC will step up efforts to reinforce the ability to detect cartel, which has become more and more sophisticated. In order to facilitate the voluntary report of cartels by cartel participants, not only the conditions for leniency program under the MRFTA but the application process for the leniency will be clarified. In addition, currently, if the bidding amount of a construction project in public sector is more than 10 billion won, the bidding document shall be reported to the KFTC. However, the amount subject to notification will decrease to 5 billion won, thereby expanding the scope of construction projects subject to the notification.

To eliminate incentives for companies to participate in cartels, the level of punishment has also been greatly stepped up. Through the amendment of the Act, the maximum limit of surcharges will be increased from 5% to 10% of relevant sales. Along with this, companies habitually participating in bid-rigging will be excluded from future bids for public procurement. In addition, international cartels conducted by multinational corporations will be more closely monitored under the amended Act.

3. Prevention of Anti-Competitive Business Combinations and Improvement of the Review System

Active corrective measures will be explored with regard to business combinations which are likely to trigger side effects resulting from monopoly. When it is recognized that anti-competitiveness is likely to take place in certain business

areas due to a business combination, the party will be ordered to sell off the problematic business areas. If the important part of the business is deemed to be anti-competitive, all of the total shares will be ordered to be sold off. For example, in a case where Samick Musical Instrument Co. Ltd. acquired shares of Young Chang Piano Co. in September 2004, the KFTC ordered Samick to sell all the shares concerned.

While substantial review relating to formation of monopoly will be strengthened, procedural burden will be eased. If a company, after report to the KFTC of a business combination by acquisition of shares (for example, 20%), becomes the largest shareholder with additional acquisition of shares, it will be obliged to make another report. On the other hand, if the size of acquired company is small with 3 billion won or less of total assets and revenues, it will be exempted from the notification obligation.

4. Continuous Monitoring of Undue Intra-Group Transaction

The KFTC has carried out an investigation with full authority on a regular basis every year on unfair intra-group transactions in which a large business group hampers fair competition in the relevant market by unduly supporting affiliates taking advantage of its dominant economic power. However, from now on, the KFTC will launch the investigation only on the business conglomerates on which it has concrete suspicion of unfair intra-group transactions, as occasions arise.

On the other hand, by reviewing whether the notification obligation of large-scale intra-group transaction is lawfully carried out, the KFTC will focus on examining whether the voluntary monitoring mechanism of the market on undue intra-group transaction works successfully. In addition, with the help of the rights to request financial transaction information, which has been newly re-introduced with the recent amendment of the MRFTA, the KFTC will continue to thoroughly eradicate unlawful acts of business groups to use their financial affiliates to support another affiliates.

5. Reasonable Improvement of the Policies With Regard to Business Conglomerates

a) Consistent Pursuit of Business Conglomerate Policies
following the 3-Year Market Reform Roadmap

On December 30th 2003, the KFTC announced “the 3-Year Market Reform Roadmap”, showing the visions and goals of market reform, after full discussion in joint task force of private and public sectors. With the aims of establishing transparent and fair economic system, the Roadmap suggested step-by-step policy directions in terms of 3 dimensions, that is, business conglomerates, individual companies, and the markets. With regard to business conglomerates, the KFTC will induce them to expand publication of information and to transform to advanced corporate governance structures such as holding companies systems in order to improve their ownership structures and corporate governance, in exchange of KFTC’s reasonable improvement of regulation on total amount of shareholdings in other domestic companies. Regarding individual companies, the KFTC will strive to seek measures to supplement individual companies’ internal and external check-and-balance system and to strengthen the liabilities of dominant shareholders with the purpose to enhancing transparency and responsibilities of corporate management. In addition, the KFTC will prevent side effects resulting from an industrial company’s control of a financial company. Lastly, as for the market, with the aim of enhancing competition, the KFTC is going to actively pursue reform of anti-competitive regulations, to firmly regulate cartels, to develop review system of business combinations, and to facilitate a system where an individual can be compensated for harms done to him by a violation of the MRFTA.

Reflecting the contents of the Roadmap, the MRFTA was amended in December 2004, entering into force from April 2005 when the KFTC will carry out the Roadmap in full scale.

b) Reasonable Improvement of Regulation on Total Amount of
Shareholdings in Other Domestic Companies

The regulation of total amount of shareholdings in other domestic companies is intended to prohibit affiliates of large business conglomerates from acquiring shares of other domestic companies surpassing 25% of their net assets. While maintaining such skeleton of the regulation, the KFTC will newly introduce incentive system in

order to facilitate the market’s voluntary monitoring function and improvement in ownership structure and corporate governance of companies. For this purpose, companies falling under one of the following categories will be exempted from the regulation: first, companies with good corporate governance armed with effective internal monitoring systems in terms of methods to appoint directors and to exercise voting rights in shareholders’ meetings; second, companies that transform into a holding company structure; third, companies with less than certain number of affiliates whose shareholding structure is relatively simple; and fourth, companies with a small gap between ownership and control power of a dominant shareholder.

In addition, the pre-existing exceptions to the regulation will be reasonably rearranged. The KFTC will revive the exceptions for shareholdings which occur in the process of corporate restructuring and expand the exceptions for private investment on social infrastructure. However, the exceptions for investment of a domestic company to a foreign company will be curtailed.

c) Expansion of Disclosure of Information on Corporate Ownership and
Governance Structure of Business Conglomerates

Disclosure of information about corporate ownership and governance structure of large business conglomerates will be carried out in order to improve the structure and to enhance transparency in business management. Share ownership relationships between affiliates, and those between controlling families and affiliates will be publicized every year, even though the actual names of shareholders will not be disclosed to protect their privacy. The gap between ownership and control of each company and business conglomerate will be measured and disclosed each year as well. By amending the Monopoly Regulation and Fair Trade Act, the KFTC plans to bolster the disclosure obligations of unlisted companies. The KFTC is also seeking ways to disclose information about stock transaction histories between specially related persons and affiliates, and loans from financial affiliates.

d) Improvement of Holding Company System

In general, a holding company refers to the one controlling business activities of other companies by owning their shares. Under the current MRFTA, the holding

company means the one whose amount of share ownership of other companies' accounts for more than 50% of total assets. In order to prevent a situation where a holding company is negatively used for controlling shareholders to expand their control via small amount of capital, a holding company should own more than 30% of shares of its listed affiliates, while it should own more than 50% of shares of its non-listed affiliates.

Ownership structures of a holding company group will become simpler and more transparent as shareholdings will be directly carried out from the holding company to its affiliates, thus reducing distortions in corporate governance structure. As circular investment among affiliates is restrained, expansion of control by inflated capital will be reduced. Clear rights and obligations of the holding company and its affiliates will facilitate business monitoring. Due to such benefits, the KFTC is encouraging business conglomerates to transform into holding company structures.

The following amendment to the MRFTA will be effective from April 1, 2005: to reduce conversion costs, the grace period to meet the debt ratios of holding companies (100%) will be expanded from one year to two years. For non-listed domestic and foreign joint-investment affiliates, the lowest limit of share ownership ratio will be decreased from 50% to 30%. In the amendment, measures to enhance the transparency of holding company structures to take full advantage of its benefits are included as well. In other words, shareholdings among affiliates will be prohibited. New regulations on ownership of more than a certain amount of the also share ownership ratio of sub-affiliates are also being established.

e) Reduced Scope of Exercising Voting Rights by Financial Affiliates

In order to prevent side effects arising from the dominance of industrial capital over financial capital, the number of voting stocks which may be exercised by financial or insurance companies shall not exceed 15% of the gross number of stocks in 2008 according to the amended Act. Such ceiling will decrease step by step from the current level of 30% to 15%. In other words, from April 1st 2006, the ceiling will go down to 25%, 20% from April 1st in 2007, and 15% from April 1st, 2008.¹⁵⁾

15) **Article 11 Limitation of Voting Rights of Finance or Insurance Companies**

No financial or insurance company belonging to an enterprise group subject to the limitations on cross

6. Establishment of Fair Trade Rules between Large Companies and Small and Medium Sized Companies

In the process of pursuing the government-led economic growth since 1960s, market structure and competition in the market have been distorted due to finance, tax and industrial policies focused on large companies. Therefore, since the mid 1980's, policies to nurture small and medium sized companies and prevent economic concentration by large companies have been taken. However, market structure and overall environment are still influenced by business conglomerates. In response to this, the government has recently made efforts to address any obstacles standing in the way for the growth of small and medium sized companies. In this regard, the KFTC is to establish fair competition between business conglomerates and SMEs, thereby easing the imbalance of power arising from the status of transaction.

7. Normalization the Subcontract Transactions between Business Conglomerates and Small and Medium Sized Companies

In the past, the provision on abusive behavior of dominant position in transaction under Article 23 of the MRFTA was applied to the subcontract transactions between large companies and SMEs. However, since mid 1980s, the Fair Subcontract Transactions Act was enacted and enforced.

shareholding shall exercise its voting rights in stocks of domestic affiliated companies, under its acquisition or ownership: *Provided*, That the same shall not apply to the cases falling under any of the following subparagraphs:

1. Where acquiring or owning stocks in order to carry on the financial business or insurance business
2. Where acquiring or owning stocks by obtaining an approval, etc. pursuant to the Insurance Business Act, etc. in order to efficiently operate and manage the insurance properties; and
3. Where the general meeting of stockholders of a relevant domestic affiliated company (limited to the stock-listed corporation or Association-registered corporation under the Securities and Exchange Act) passes a resolution for matters falling under any of the following items. In this case, the number of voting stocks from among those of finance insurance company shall not exceed 15/100 of the gross number of stocks
 - (a) Appointment or dismissal of officers;
 - (b) Alteration of the articles of incorporation; and
 - (c) Merger of the said affiliated company with another company, or transfer of the whole or part of business to another company

The applied industries, which are currently confined to manufacturing and construction industries, will be expanded to service industry. In addition, to actively correct unfair subcontract transaction practices, companies subject to the written investigation will be carried out by increasing from 35,000 in 2003 to 70,000 by 2007.

In order to prevent activities unduly decreasing the cost, companies subject to the KFTC will carry out the written investigation survey on the price and disclose the information related to subcontract transaction, such as the price of finished goods and changes of the cost, thereby preventing unfair trade practices through market monitoring.

8. Strengthened monitoring over unfair trade practices of large retailers

In order to correct imbalanced power between large retailers and their small and medium-sized suppliers, the KFTC will continuously monitor unfair practices of large retailers. Written survey will be taken for unfair trade practices of large retailers and investigation will be carried out whether large retailers do abusive behavior of their dominant position. If any violating activities are found out, corrective measures will be taken. In addition, the voluntary compliance program for large retailers will be encouraged and preventive efforts will be carried out as well through training and education program.

9. Setting up Fair Trade Rules in the Franchise Business Sector

As franchise business can easily set up new business by using the brand and its know-how, the franchise business has exploded around financial crisis. However, in case of some headquarter of franchise business, abusive behavior of dominant position often takes place.

Therefore, in order to minimize damages of franchisees due to false and exaggerated information, the standard form of information disclosure and standard franchise contract are planned to be introduced and spread. In addition, education and promotion to executives in the headquarter and potential franchisee will be actively implemented as well.

Appendix I. Major Content of Amended MRFTA

a) Increasing the Ceiling of Surcharges against Cartel

In order to reinforce the deterrent effect of cartel, the upper ceiling of surcharges is increased from 5% of sales in related goods or services to 10%.

b) More efficient M&A review system

Through the revised M&A review system, the procedural burden on business is reduced while substantial review to prevent any monopolistic side-effects is strengthened. When the size of acquired company is small (less than 3 billion won of total assets and sales), newly established provision allows such companies to be exempted from the reporting of M&A to the KFTC. In addition, in reporting the M&A by share acquisition of large companies, it is changed from *ex-post* report to *ex-ante* report before completing the M&A. Moreover, in case of complicated M&A with any possible anti-competitive effects, the M&A review period is extended from the current 60 days to 90 days.

c) Complement of Extra-Territorial Application of the MRFTA

The grounding provision is provided to apply the MRFTA to unfair trade practices by foreign business taken place in overseas, such as international cartels, which have any influence in domestic market, including consumers and companies. In addition, the provision related to the document service is newly established to serve the document to local representative, if any, appointed by foreign businesses. In order to enhance the efficiency of extra-territorial application of the MRFTA, the KFTC is authorized to assist foreign governments' law enforcement according to the agreements with foreign governments based on reciprocity.

d) Strengthened Disclosure Obligations of Non-Listed and Non-Registered Companies under Business Conglomerates

According to the amendment, the non-listed and non-registered companies under

business conglomerates shall improve corporate ownership and governance structure, and disclose any elements necessary to improve management transparency.

e) Complement of the Holding Company System

Grace period to meet the conditions required to transform into holding company is newly established. In other words, two-year of grace period for disposing the non-financial shares held by financial companies (and vice versa) at the time when they transform into holding companies is newly granted. In addition, the grace period, which had been allowed for only several types of conversion into holding company, comes to apply to all types of conversion. Moreover, to enhance transparency of holding company structure, shareholdings among subsidiaries are prohibited. More than 5% of share ownership in non-affiliates by holding company is also, in principle, banned.

f) Reasonable Improvement of the Regulation setting the ceiling on total amount of shareholdings of other domestic companies

In order to improve corporate ownership and governance structure and encourage transparent business management, the KFTC introduced the four graduation standards¹⁶⁾ of this regulation, and made up with conditions allowing for exceptions and exemptions.

g) Reduced scope of voting rights allowed for financial affiliates

Voting rights of financial affiliates, which are under large business conglomerate with more than 2 trillion won of assets, over their shares in other affiliates will be gradually reduced from the current 30% to 15% by 2008.

16) 1) company with good corporate governance, 2) company under a holding company structure, 3) business conglomerates with simple shareholding structure with less than certain number of affiliates, and 4) business conglomerates with a small gap between voting rights and cash flow rights exercised by controlling shareholders

h) Reintroduction of the KFTC's rights to request financial transaction information for the next three years

The rights are given to KFTC to request financial transaction information to investigate undue internal trading, which was expired in February this year, is to be reintroduced for a three-year period.

i) Facilitating the System asking for Damage Compensation

The KFTC complemented the related provisions for those who seek any damages to easily file the suit. Up until now, only after confirming corrective measures taken by the KFTC, those who seek damages can file the suit for compensation. However, by deleting such restraining provision, they can directly file the suit to the court without waiting for the KFTC's decision. In addition, the system estimating the damaged amount was introduced, which means to admit the damaged amount by considering the result of evidentiary investigation by the court when it is hard for the damaged parties to prove the amount.

j) Paying the rewards to informant of illegal activity

To facilitate fair competition among businesses and prevent unfair activities beforehand, the system to give the rewards to the informant of illegal activity is introduced.

Appendix 2: Major Statistics related to the Implementation of MRFTA

< Records of corrective measures by types of violation of MRFTA >

(Warnings and higher, Unit: Cases)

Types	Year	1995	1996	1997	1998	1999	2000	2001	2002	2003
Abuse of Market-dominating Position		3	1	2	5	2	-	4	-	1
Violation of Restriction on Combination of Enterprises		23	36	47	29	19	48	45	46	43
Violation of Economic Concentration Mitigation		3	14	6	11	38	19	16	80	32
Unfair Collaborative Acts		26	36	22	37	34	47	43	47	23
Prohibited Activities of Business Associations		40	66	53	101	93	117	88	100	91
Unfair Trade Practices		353	339	509	406	173	121	169	210	123
Unfair International Contracts		40	26	2	1	-	-	-	-	-
Subtotal		488	518	641	590	359	352	365	483	313
Unfair Labeling and Advertising		(97)	(130)	(232)	(185)	342	310	328	338	558
Unfair Adhesion Contracts		51	56	152	112	255	56	100	175	114
Unfair Subcontract Transactions		387	494	534	582	316	874	3,130	1,632	1,583
Consumer Protection Act on Electronic Transaction		-	-	-	-	-	-	-	-	96
Door-to-Door Sales, etc. Act		-	-	-	-	-	-	-	-	24
Fair Franchise Transaction Act		-	-	-	-	-	-	-	-	1
Others					2		5	11	7	13
Total		926	1,068	1,327	1,286	1,272	1,597	3,934	2,635	2,702

< Records of case treatment by the types of corrective measures >

(Warnings and higher, Unit: Cases)

Type	Year	'81~ '93	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Filing of complaint to the Prosecutor General (Surcharge)		48 (-)	13 (-)	33 (2)	16 (1)	35 (-)	37 (5)	11 (-)	22 (3)	23 (9)	11 (1)	18 (4)	267 (25)
Corrective orders (Surcharge)		1288 (34)	207 (68)	199 (49)	250 (21)	221 (9)	538 (64)	621 (102)	441 (46)	347 (73)	496 (90)	449 (33)	5,057 (589)
Corrective recommendations (Request of correction)		796 (12)	110 (5)	119 (3)	179 (4)	329 (10)	57 (5)	149 (4)	35 (-)	84 (4)	110 (5)	100 (2)	2,068 (54)
Warnings*		5,166	449	572	619	732	649	487	1,099	3,476	2,013	2,133	17,395
Total		7,310	784	926	1,068	1,327	1,286	1,272	1,597	3,934	2,635	2,702	24,841

* This includes the records of mediations by Dispute Mediation Council for Subcontract Disputes and cases where fines were imposed.

< Records by year of statute consultations where the KFTC provided its opinions and whether they were reflected >

(Unit: Cases)

Year	Total cases of consultations	Cases where KFTC provided its opinions	Whether the opinions reflected	
			Reflected	Not reflected
2003	361	46(12.7%)	38(82.6%)	8(17.4%)
2002	381	36(9.4%)	34(94.4%)	2(5.6%)
2001	432	51(12.3%)	47(88.7%)	6(11.3%)
2000	481	60(12.5%)	51(85.0%)	9(15.0%)